



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In the Matter of the Application of : Coates, Fredrica V.

Serial No.: 10/773,160

Filed: 02/09/2004

For: Protective Undergarments Having Anchored Pocketed-Sling Structures and
Manufacturing Method Therefor

Examiner: Reichle, Karin M. Group Art Unit: 3761

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Commissioner for Patents

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Dear Sir:

APPEAL BRIEF

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REAL PARTY IN INTEREST

The real party in interest is the assignee Tailored Technologies, Inc., the assignee of the inventor Fredrica V. Coates.

This application is a divisional of US Patent 09/512,085, which issued as US Patent 6,926,705 and the assignment of the parent application is of record.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences

STATUS OF CLAIMS

Claims 1-19 have been canceled.

Claims 20-23 have been finally rejected.

Claim 23 has been canceled.

Claims 24-27 have been finally rejected.

Claim 28 has been canceled.

Claims 29-31 have been finally rejected.

Claims 32 and 33 have been canceled.

Claim 34 has been finally rejected.

STATUS OF AMENDMENTS

There are no pending amendments and there have been no amendments since the final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 20 is the only independent claim.

Claim 20 is directed to a protective undergarment comprising a fabric outer layer 12, a fabric anchor layer 16 and a pocketed sling 50 attachable to and detachable from the anchor layer 16, but not the outer layer 12. See Figures 3 to Figure 3F and page 12, lines 13-15 and Page 12, lines 15-21. See also page 8, lines 8 and 9 and reference to Fig 1 on page 12, line 15. The anchor layer 16 is joined to the outer layer 12 by stitches 20. See page 12, lines 14-15. The shape of the anchor layer 16 conforms to the outer layer 12, which conforms to a user's buttock and leg region. See Figures 3C-3F. The pocketed sling 50 is displaced inwardly toward the center of the anchor layer 16 and inwardly from stitches 20 joining the anchor layer 16 to the outer layer 12. See Figures 3 and 3A. The pocketed sling 50 retains a fluid absorbent pad (not shown), and the pocketed sling 50 is located on the inner side of the anchor layer 12. See page 9, lines 3-4. Releasable fasteners 84, 86 and/or 120, 121 for attaching and detaching the pocketed sling 50 to and from the anchor layer 16 are displaced inwardly from the stitches 20 joining the anchor layer 16 to the outer layer 12 around the entire periphery of the anchor layer 16, and the outer layer 12 overlies the releasable fasteners 84, 86 and/or 120, 121. See Figures 3 to 3F and page 13, lines 3-9.

GROUND FOR REJECTION TO BE REVIEWED ON APPEAL

Whether Claims 20-22, 24-27, 29-31 and 34 are unpatentable under 35 U.S.C. 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Whether Claims 20-21, 24-27 and 29-31 are unpatentable under 35 U.S.C. 103 (a) as being unpatentable over Bernard (US Patent 2,691,983) in view of Wyant (US Patent 5,843,065) and Siudzinski (US Patent 5,772,649).

Whether Claims 20-21, 24-27 and 29-31 are unpatentable under 35 U.S.C. 103(a) as being unpatentable over Bernard (US Patent 2,691,983) in view of Siudzinski (US Patent 5,772,649) and Thompson (US Patent 3,049,124) and Stevens (US Patent 4,892,598).

Whether Claim 34 is unpatentable under 35 U.S.C. 103(a) as being unpatentable over Bernard (US Patent 2,691,983) in view of Wyant (US Patent 5,843,065) and Siudzinski (US Patent 5,772,649) and further in view of Alsop (US Patent 1,977,604) and Brownlee (US Patent 5,360,422).

Whether Claim 34 is unpatentable under 35 USC 103 (a) as being over over Bernard (US Patent 2,691,983) in view of Siudzinski (US Patent 5,772,649) and Thompson (US Patent 3,049,124) and Stevens (US Patent 4,892,598) and further in view of Alsop (US Patent 1,977,604) and Brownlee (US Patent 5,360,422).

ARGUMENT

35 USC 112, SECOND PARAGRAPH

The rejection of Claim 20 and the claims dependent thereon under 35 USC 112, second paragraph is not believed to be well founded. Antecedent basis for the stitches joining the anchor layer to the outer layer is found in line 13 of Claim 20. Antecedent basis for the releasable fasteners is found in line 17 of Claim 20. The remainder of the last paragraph of Claim 20 merely recites the relative positioning of these components, as shown in Figures 3 – 3F of the specification and constitutes a further limitation on the claimed invention.

35 USC 103

The principal reference relied upon to reject all of the pending claims under 35 U.S.C. 103 (a) is US Patent 2,691,983 (Bernard). The principal issues involved in this appeal concern the teaching of a suggestion that may be derived from Bernard '983.

All obviousness rejections are based on a fundamental mischaracterization of the Bernard '983 reference. Bernard '983 discloses two separate embodiments. Only the embodiment of Figures 7-9, discloses a detachable sling, an element of claims 20 and the claims dependent thereon, and it is only that embodiment that is relevant to the invention claimed herein. The embodiment of Figures 1-6 of Bernard '983 shows a garment in which a diaper pocket is formed by side strips 27 stitched to two layers 15 and 16 forming the body portion of the garment, and the use of a detachable sling or pocket, whether in the claimed invention or in the embodiment of Bernard '983, must eliminate certain elements of the first embodiment of Bernard '983 .

Claim 20 requires an outer layer and an anchor layer, plus a detachable pocketed sling. The rejection arbitrarily switches back and forth in attempt to incorporate structures in Figures 1-6 of Bernard '983 into the embodiment of Figures 7-9 of Bernard '983. For example, the rejection is based on the assumption that the stitching 17 of Figures 1-6 is incorporated into the embodiment of Figures 7-9. This stitching 17 joins

the outer layer 15 with a water repellant lining 16 in Figures 1-6. A corresponding lining 16a of the embodiment of Figures 7-9 is coupled by detachable fasteners 51 and is not stitched to the outer layer 15a. The discussion of the stitching 31 in the embodiment of Figures 1-6 is not relevant to the detachable pocket version of Figures 7-8 of Bernard '983.

In support of the rejection it is asserted that Figure 9 shows a structure incorporating two layers forming the outer portion 15a of the body, and attempts to support this interpretation by referring to an enlarged view of Figure 9. However, there is no discussion in the specification that these three layers are formed by a single layer sling 16a and a dual layer body portion. Bernard '983 contains no discussion of the unnumbered middle layer that appears upon enlargement of Figure 9. In the absence of any discussion or anything inherent in the embodiment of Figures 7-9, Figure 9 can also be interpreted as showing a dual layer diaper pocket 16a and a single layer outer body, the opposite of the claimed invention and of the rationale supporting the final rejection for obviousness. In other words, Figure 9 is can clearly be interpreted disclosing a structure that is inconsistent with Claim 20. A drawing may be relied upon to support a rejection, but the drawing must show the claimed structural elements and how they are put together. Admittedly the drawing must be evaluated for what it reasonably discloses and suggests to one of ordinary skill in the art. See MPEP Section 2125. Here there is no reasonable suggestion that the Figure 9 of Bernard shows an outer layer and an anchor layer and a single layer detachable pocketed sling. It is just not clear what the reference suggests or discloses, since it is at least equally capable to two diametrically opposed interpretations and there is nothing to suggest that the interpretation relied upon to support the rejection is correct. Even enlargement of Figure 9 does not show how the three layers are attached or what layer is detachable from what other layers. One of ordinary skill in the art would not know the detailed structure of Bernard, shown only in the sketchy disclosure of Figure 9 nor discussed in the application. The possibility that it would employ the structure claimed herein would only be apparent in hindsight and would offer not help to one of ordinary skill in the art.

If indeed there is anything in Bernard '983 to resolve such a discrepancy, it would be more logical to interpret Bernard '983 as disclosing a dual layer diaper pocket and a

single layer outer body, and thus a structure inconsistent with the pending claims. For instance it is stated that the bottom sheet 16a can be detached so that the outer garment can be worn as a sunsuit. Would a sunsuit need two layers? Furthermore the embodiment of Figures 1-6 shows a garment requiring only a single outer layer 15. It would be logical to assume that only a one layer outer garment would be needed for the embodiment of Figures 7-9, since the use of a detachable pocket would not require an additional outer layer.

The unnumbered dashed lines in Figure 7 do not indicate that the body portion 15a has two layers, since these dashed lines can just as easily be interpreted as a hem, like the hem incorporated in the outer layer 15 of the embodiment of Figures 1-6. The dashed lines in Figure 8 are no more instructive because the diaper pocket 16a has multiple layers including top strips 25a.

The interpretation that Bernard '983 has an outer layer of 15a and an inner layer 15a, which would then correspond to claimed outer layer and anchor layer respectively, has other problems. If the unnumbered middle layer is the anchor layer, it must then follow that the fastener element 51 extends through both the outer layer 15a and this middle layer of element 15a if fastener elements 51 are to be exposed so that the fasteners 52 can engage and disengage from fasteners 51. Therefore, the sling must be directly connected to the outer layer 15a, since it appears that fastener 51 extends through both layers 15a to engage fasteners 52. Thus the statement that the pocketed sling part is detachably coupled to the anchor layer but not to the outer layer is inconsistent with the most logical interpretation of the Bernard '983 reference. Therefore this interpretation of Bernard is incompatible with the rejected claims

It is also noted that a logical interpretation of these details of the Bernard '983 reference is even more problematic because the configuration of fasteners 51 and 52 on the left of Figure 9 is different from the configuration of fasteners 51 and 52 on the right of Figure 9. It is submitted therefore that any interpretation of the nature of these fasteners is speculative at best, and would be insufficient to support a rejection under 35 USC 103.

Applicant's assertion that Bernard '983 is not inconsistent with the broadest claim is not inconsistent with the principal that the references must be read together to

determine if the claimed invention is nonobviousness under 35 USC 103(a). However, the final rejection of Claim 20 is discussed solely in terms of Bernard '983, and the other references are discussed primarily with respect to the dependent claims. The secondary references do not supply the claimed structure missing from Bernard '983 when considered separately and in combination with each other.

In rejecting the claims under 35 USC 103 it is asserted that Wyant '065 and Siudzinski '649 suggest that filamentary fasteners are interchangeable with the snap fasteners of Bernard '983. This assertion is not contested, but the rejection is understood to further state that filamentary fasteners on the anchor layer are necessarily and inevitable completely overlaid by the outer layer. The snap fasteners of Bernard '983 are exposed and assuming that filamentary fasteners could be substituted for snap fasteners does not mean that the filamentary fasteners will not be exposed. The stitches joining a filamentary fastener would correspond to the exposed studs on snap fasteners, and it is neither necessary nor inevitable that these stitches, forming part of the filamentary fastener, would be completely covered. The simplest approach would be for the stitches to extend through the outer layer of Bernard '983 if filamentary fasteners were substituted. Thus the use of filamentary or VELCRO fasteners would not inevitably be fastened only to an anchor layer and not to an outer layer as postulated by the rejection. Furthermore, the sides of filamentary fasteners would still be exposed if located along the edges of the outer layer in the position corresponding to that of the Bernard '983 snap fasteners 51 or 52. Furthermore, neither Wyant '065 and/or Siudzinski '649 supplies the missing anchor layer that is not present in the most logical interpretation of Bernard '983, nor do these secondary references shed light on how to interpret Bernard '983.

The statement made with respect to Claim 22 that cooperating snap fasteners are completely overlaid by an outer layer as taught by Siudzinski '649, Thompson '124, and Stevens '598 is believed to be an incorrect characterization of these references and therefore would not support the suggested modifications of Bernard '983.

Reliance upon Siudzinski '649 with respect to Claim 22 to teach that snap fasteners could be completely covered by a fabric outer layer shaped to conform to a buttock and leg region of the user is not understood. No part of the extension panel of Siudzinski '649 conforms to the shape of a buttock and leg region. Siudzinski '649

appears to disclose male and female snap fasteners attached to separate arcuate segments 75 of sheets 70a and 70b of an extension panel from which a diaper extends. There is nothing to show that either of these separate sheets 70a and 70b are formed of two layers, nor does there appear to be any suggestion that the sheets 70a and 70b are stitched around the male and female fasteners 76 and 78. Even if the arcuate segments 75 each have two layers, the phantom or dotted lines shown in Figure 6 are consistent with showing the snaps attached to the either layer. If the snaps were attached to inner layers of Siudzinski '649, a subsequent modification of Bernard '983 could necessitate an undesirable enlargement of Bernard '983's outer layer 15a relative to the diaper, which could alter the fit of the bid and suspenders relative to the wearer's waist.

The female snap fasteners of Thompson '124 '124 are secured to the outer layer and are thus not relevant to the rejected claims. Col. 2, lines 6, 7.

Figures 19A-19C of Stevens '598 '598 show a configuration in which fenestrations or openings are located on the outer cover 12 so that snap fasteners are located only on the disposable absorbent pad. Its relevance to the claimed invention or to a modification of Bernard '983 is not understood and is believed to be misplaced.

The secondary references also do not appear relevant to the claimed invention for reasons other than as stated in the rejection.

Siudzinski '649 does appear to disclose snap fasteners between two layers forming an extender panel, but there is no relationship to the use of such fasteners on an anchor layer that overlaps the diaper, and no sling is disclosed.

The absorbent pad 51 of Wyant '065 is detachably mounted to the diaper, but there is no pocketed sling or pocket for the absorbent pad. The pad is attached directly to the inner layer of the diaper.

Stevens '598 appears to teach neither a combination of an outer and anchor layer, nor a sling in which the absorbent pad can be positioned, and in combination with Bernard '983 and/or the other references would not teach the instant invention.

Alsop '604 discloses two embodiments, one of which includes a detachable pocket member, but this pocket member replaces a waterproof layer in the other embodiment. Alsop '604 is thus internally inconsistent with the claimed invention.

Brownlee '422 may disclose a pocket, but it does not disclose a detachable sling.

Claim 20 also recites that the releasable fasteners on the anchor layer are displaced inwardly from the stitches joining the anchor layer to the outer layer around the entire periphery of the anchor layer and all of the releasable fasteners on the anchor layer and the pocketed sling are displaced inwardly relative to the stitches joining the anchor layer to the outer layer when the pocketed sling is fastened to the anchor layer.

Figure 7 of Bernard '983 shows that the fastener elements 51 are immediately adjacent a dotted line. Even if this dotted line were to represent stitching, and there is nothing in Bernard '983 to clearly support that interpretation, this dotted line is tangent to the fastener elements 51. The relationship of anything that might be interpreted as stitching to the fastener elements 51 does not appear to be apparent from Figure 9 of Bernard '983. The fastener elements 52 are located adjacent to the peripheral edges of the diaper as shown in Figure 8. A logical interpretation is that the subassembly 53 should be as large as possible with reference to outer supporting garment 15a and the bottom sheet 16a.

As claimed, the sling is detachable from the anchor layer, but is not attachable to the outer layer. The spacing of all fasteners from the outer layer and from stitches leading to the outer layer will isolate the fasteners from the stitches and from any leak path through the outer and anchor layer. This spacing is incompatible with the Bernard '983 configuration and it is not suggested by any of the secondary references. For example, it is not clear that Siudzinski '649 even has layers corresponding to anchor and outer layers, nor is there stitching adjacent to the fasteners.

The rejection of Claim 34 is not commensurate with the claimed subject matter. Claim 34 requires removal of triangular corner portions of a rectangular piece of material as shown in Figures 3D and 3F. The rejection is directed to covering an outer edge of the pocket with an elastic strip. Although the Alsop and Brownlee references do show the use of elastic strips, they do not show the construction of a pocket formed by a rectangular piece of material absent triangular corner portions as claimed.

Claim 34 is not a product by process claim. Claim 34 clearly defines a structure.

The claim language that the triangular corner sections have been removed says the same thing as a rectangular piece of material absent triangular corner sections. The claim merely recites the shape of one component of the claimed invention. Process

terminology, such as cut, crop, rip or slit have not been employed. One seeking to determine if a potentially infringing article was fabricated by a specific process would have no problem with the current claim language. He or she need only examine the final product.

CLAIMS APPENDIX

20. (Currently Amended) A protective undergarment, comprising a first part and a second part attachable to and detachable from the first part:

the first part comprising an outer layer and an anchor layer;

the outer layer comprising a fabric layer shaped to conform to a buttock and leg region of a user;

the anchor layer comprising a fabric layer stitched to the outer layer and having a shape conforming to that of the outer layer, the anchor layer and the outer layer comprising separate fabrics; and

the second part comprising a pocketed sling forming a pocket for retaining a fluid absorbent pad, the pocketed sling being detachably coupleable to the anchor layer but not attachable directly to the outer layer, wherein when second part is attached to the first part, the pocketed sling is displaced inwardly toward a center of the anchor layer and inwardly from stitches joining the anchor layer and the outer layer, the pocketed sling extending from the anchor layer on the inner side of the undergarment when the undergarment is worn with the pocket facing inwardly away from the anchor layer;

wherein the pocketed sling is attachable to and detachable from the anchor layer by releasable fasteners on the pocketed sling and the anchor layer with the outer layer completely overlying the releasable fasteners on the anchor layer; and

wherein the releasable fasteners on the anchor layer are displaced inwardly from the stitches joining the anchor layer to the outer layer around the entire periphery of the anchor layer and all of the releasable fasteners on the anchor layer and the pocketed sling are displaced inwardly relative to the stitches joining the anchor layer and the outer layer when the pocketed sling is fastened to the anchor layer.

21. The protective undergarment as in claim 20, wherein the releasable fasteners comprise filamentary fasteners

22. The protective undergarment as in claim 20 wherein the releasable fasteners comprise snap fasteners.

24. The protective undergarment of claim 20 wherein the releasable fasteners on the anchor layer are located only adjacent opposite ends of the pocketed sling.

25. The protective undergarment of claim 20 wherein releasable fasteners on the anchor layer are located between opposite ends of the pocketed sling.
26. The protective undergarment of claim 20 wherein the anchor layer is attached to the outer layer adjacent opposite ends of the outer layer.
27. The protective undergarment of claim 26 wherein the pocketed sling is attached to the anchor layer adjacent to, but spaced from the opposite ends of the outer layer where the anchor layer is attached to the outer layer.
29. The protective undergarment of claim 20 wherein the anchor layer is attached to the outer layer only adjacent peripheral edges of the anchor layer and the outer layer.
30. The protective undergarment of claim 29 wherein the anchor layer is attached to the outer layer around the entire periphery of the anchor layer.
31. The protective undergarment of claim 20 wherein the pocketed sling is attached to the anchor layer inwardly from peripheral edges of the outer layer.
34. The protective undergarment of claim 20 wherein the second part initially includes a rectangular piece of material, wherein triangular corner portions of the rectangular piece of material have been removed and remaining adjacent sides created by such removal being stitched together to form said pocket, an outer edge of the pocket being covered by an elastic strip.

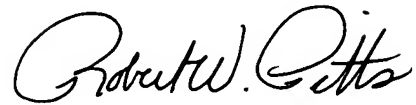
EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None

Respectfully Submitted:

A handwritten signature in black ink, reading "Robert W. Pitts". The signature is written in a cursive style with a large, stylized "R" and "P".

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